

REMARKS

Claims 1 through 37 are currently pending in the application, claims 20 through 37 being newly added with this amendment.

This amendment is in response to the Office Action of June 4, 2004.

Information Disclosure Statement(s)

Applicant notes the filing of an Information Disclosure Statement on June 4, 2004 and notes that a copy of the first and second sheet of form PTO-1449 was not returned with the outstanding Office Action. Applicant respectfully requests that the information cited on the PTO-1449 (which is the same as that of record to that date in the parent application hereto) be made of record herein.

Preliminary Amendment

Applicant notes the filing of a Preliminary Amendment on January 22, 2004, which filing was not acknowledged in the outstanding Office Action. Should the Preliminary Amendment have failed to have been entered in the Office file, Applicant will provide a true copy to the Examiner.

35 U.S.C. § 101 Double Patenting Rejection

Claims 1 through 19 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1 through 22 of prior U.S. Patent 6,607,001 (hereinafter referred to as the '001 patent). Applicant respectfully traverses this rejection, as hereinafter set forth.

Applicant asserts that a reliable test for statutory double patenting under 35 U.S.C. § 101 is whether a claim in the application can be literally infringed without literally infringing a corresponding claim in the patent. Is there an embodiment of the invention that falls within the scope of one claims but not the other? If there is such an embodiment of the invention, then identical subject matter is not defined by both claims and statutory double patenting under 35 U.S.C. § 101 does not exist. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

After carefully considering the cited prior art, the rejections, and the Examiner's comments, Applicant has amended the claimed invention to clearly eliminate any statutory double patenting under 35 U.S.C. § 101 regarding the '001 patent.

Applicant asserts that no statutory double patenting under 35 U.S.C. § 101 exists between the embodiment of the presently claimed inventions of presently amended independent claim 1 of the present application and the embodiment of the invention set forth in corresponding independent claim 1 of the '001 patent because different embodiments of the inventions are being claimed. For instance, the embodiment of the invention set forth in presently amended independent claim 1 of the present application set forth elements of the inventions calling for "a vessel having a top, a bottom, and a plurality of at least three sides forming a vessel, the vessel including a semiconductor stage for disposing the semiconductor structure thereon" whereas the embodiment of the invention set forth in independent claim 1 of the '001 patent does not. Therefore, no statutory double patenting under 35 U.S.C. § 101 exists between the embodiment of the invention set forth in presently amended independent claim 1 of the present application and corresponding independent claim 1 of the '001 patent. Accordingly, claims 1 through 19 are allowable.

For the reasons set forth herein, Applicant requests the allowance of claims 1 through 37 and the case passed for issue.

Respectfully submitted,



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